

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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*In the Matter of:*

Alplaus CPO  
Contract No. 089480-02-Z-0155  
Alplaus, New York 12008-0087  
(Alplaus Residents' Association,  
Petitioner)

Docket No. A2012-88

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**UNITED STATES POSTAL SERVICE REPLY TO  
BRIEFS OF PETITIONER AND PUBLIC REPRESENTATIVE REGARDING  
UNITED STATES POSTAL SERVICE MOTION TO DISMISS  
(December 28, 2011)**

This matter commenced with a letter received by the Postal Regulatory Commission that purports to invoke its jurisdiction under 39 U.S.C. § 404(d) to consider an appeal of a Postal Service decision to terminate contract number 089480-02-Z-0155, which governs operation of the Alplaus Community Post Office (CPO).<sup>1</sup> On December 14, 2011, the Postal Service filed a motion to dismiss Petitioner's appeal, renewing its position that the scope of Section 404(d)(5) is limited to discontinuance of Postal Service operated "Post Offices" and does not apply to operations related to contractor-operated units, which are not owned or operated by the Postal Service.<sup>2</sup> On December 21, 2011, Petitioner and the Public Representative submitted briefs in opposition to the Postal Service's motion to dismiss, asserting that the Commission has

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<sup>1</sup> Petition for Review Received from Andy Gilpin, President, Alplaus Residents' Association Regarding the Alplaus, NY Post Office 12008, PRC Docket No. A2012-88 (November 29, 2011).

<sup>2</sup> United States Postal Service Motion to Dismiss Proceedings, PRC Docket No. A2012-88 (December 14, 2011).

jurisdiction to hear an appeal of the Postal Service's decision to terminate a contract governing the operation of a Community Post Office (CPO).<sup>3</sup>

This pleading responds to the briefs of Petitioner and the Public Representative, and provides additional support for the Postal Service's position that the Commission lacks jurisdiction to consider an appeal of a Postal Service decision to terminate a contract governing the operation of a CPO. In addition to the statutory and policy reasons outlined in the Postal Service's motion to dismiss, the views of Commission staff are consistent with the Postal Service's position on jurisdiction in this matter.

Specifically, in his July 30, 2009, written statement before the U.S. House of Representatives Committee on Oversight and Government Reform Subcommittee on Federal Workforce, Postal Service and the District of Columbia, Mr. John Waller, then PRC Director, Office of Accountability and Compliance, stated that "[t]he Commission has long accepted the common usage of any retail location staffed by Postal Service personnel as the operative definition of a post office as used in the [Postal Law]." *Testimony of John Waller, Director of Office of Accountability and Compliance on behalf of the Postal Regulatory Commission Before the U.S. House of Representatives Committee on Oversight and Government Reform Subcommittee on Federal Workforce, Postal Service and the District of Columbia* (July 30, 2009) (Waller Testimony).

The Postal Service incorporated this same position in revisions to the Postal Service Handbook PO-101 and the Code of Federal Regulations.

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<sup>3</sup> Motion in Opposition of the USPS Motion to Deny Appeal, PRC Docket No. A2012-88 (December 21, 2011); Public Representative Answer in Opposition to United States Postal Service Motion to Dismiss Proceedings, PRC Docket No. A2012-88 (December 21, 2011).

*Compare* Waller Testimony (asserting that Post Office discontinuance procedures should apply to “any retail location staffed by Postal Service personnel”) *with* 76 Fed. Reg. 41420 (July 14, 2011) (providing that most Post Office discontinuance procedures would be extended to “any Postal Service employee-operated [P]ost [O]ffice, station, or branch, but ... not ... any ... retail facility operated by a contractor”). The Postal Service’s modification to 39 C.F.R. § 241.3(a)(1) emphasizes the distinction between Postal Service employee-operated retail facilities and CPOs, as reflected in the July 14, 2011 amendment to the Code of Federal Regulations. See 76 Fed. Reg. 41420 (July 14, 2011).

While the Commission may be charged with a policymaking function in other areas, such as in postal ratemaking under 39 U.S.C. § 3622 or in the review of “nonpostal services” under 39 U.S.C. § 404(e)(3), it has only a limited adjudicatory role in the review of Post Office discontinuance actions. The Postal Service is the federal entity tasked with the responsibility “to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services,” 39 U.S.C. § 403(b)(3), and “to determine the need for Post Offices, postal and training facilities and equipment, and to provide such offices, facilities, and equipment as it determines are needed,” *id.* at 404(a)(3).<sup>4</sup> The Postal Service is also the entity tasked with administering the notice and comment procedures of Section 404(d) prior to closing or consolidating a subset of its facilities: Post Offices. The

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<sup>4</sup> The Commission has no jurisdiction over the Postal Service’s compliance with Sections 403(b)(3) or 404(a)(3), except as regards the review of Post Office closures or consolidations under Section 404(d)(5).

Commission's role, meanwhile, is limited to reviewing the Postal Service's Post Office discontinuance determinations pursuant to the standards of review applicable to court review of agency action under the Administrative Procedure Act. *Compare* 39 U.S.C. § 404(d)(5) *with* 5 U.S.C. § 706. The Commission's authority is also limited to either affirming the Postal Service's decision or remanding it for further consideration in accordance with Section 404(d); it cannot modify the Postal Service's policy decision as to the substantive merits of closing or consolidating a Post Office. Consistent with the Commission's limited power over 39 U.S.C. § 404(d) issues as compared to the Postal Service, the Postal Service, and not the Commission, is the appropriate authority to determine whether CPOs are subject to the procedures contained in 39 U.S.C. § 404(d).

Accordingly, the United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this appeal.

Respectfully submitted,

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